

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2000-##

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

ROY HAUSER

dba

TALL TIMBER FOREST MANAGEMENT

FOR

VIOLATIONS OF WASTE DISCHARGE PROHIBITIONS
CONTAINED IN THE WATER QUALITY CONTROL PLAN
FOR THE NORTH COAST REGION

Mendocino County

WHEREAS, the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby finds that:

1. Timber harvest plan (THP) number 1-97-187 MEN received approval from the California Department of Forestry and Fire Protection (CDF) for a 91-acre shelterwood and seed tree removal, commercial thinning, and rehabilitation harvest on July 30, 1997. The properties are located in portions of SE ¼, Section 22 of Township 19 North, Range 13 West, Mount Diablo Base Meridian in Mendocino County.
2. Mr. Roy Hauser dba Tall Timber Forest Management (Mr. Hauser), 165 Fir Canyon Road, Grants Pass, Oregon, is a licensed timber operator (LTO) within the State of California, license number A-1531. Mr. Hauser was amended into timber harvest plan 1-97-187 MEN on June 22, 1998, through Minor Amendment #3.
3. As the LTO, Mr. Hauser was responsible for the entire THP operation which includes, but is not limited to, road and landing reconstruction, construction and maintenance in the THP area and on the appurtenant road. THP operations include the implementation of erosion control measures.
4. Mr. Hauser failed to install adequate erosion control measures by October 15, 1999, which, with the onset of winter, led to discharges totaling approximately 1450 gallons of waste earthen material. These discharges adversely impacted the beneficial uses of String and Tartar Creeks, fish bearing streams that are tributary to the Eel River. Mr. Hauser violated prohibitions contained in the Water Quality Control Plan for the North Coast Region for which the RWQCB may impose civil liability under Section 13350(a)(2) of the California Water Code.

5. Administrative Civil Liability Complaint No. R1-2000-11 was issued to Mr. Hauser by the Executive Officer on March 1, 2000. The Complaint was mailed to Mr. Hauser's Post Office Box in Wilderville, Oregon via the United States Post Office with certified-return receipt mail. An attempt was made to have a second copy served on Mr. Hauser by the Josephine County Sheriffs Office. The Complaint was in the amount of \$10,000 and gave Mr. Hauser the option of either paying the civil liability and waiving an evidentiary hearing or contesting the Complaint thereby requesting an evidentiary hearing. Mr. Hauser did not respond to the Complaint and did not waive his right to a hearing before the Regional Water Board. The Complaint notified Mr. Hauser that an evidentiary hearing would be scheduled if his hearing waiver was not submitted. Therefore, an evidentiary hearing on this matter was held before the Regional Water Board on April 27, 2000, in the Eureka City Council Chambers, 531 K Street, Eureka, California.
6. Mr. Hauser violated the following prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan) (page 4-28.00).

“Section 4: IMPLEMENTATION PLANS; NONPOINT
SOURCE MEASURES; ACTION PLAN FOR LOGGING,
CONSTRUCTION AND ASSOCIATED ACTIVITIES

DISCHARGE PROHIBITIONS:

The discharge of soil, silt, bark, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”

7. Section 4: Guidelines for Implementation and Enforcement of Discharge Prohibitions Relating to Logging, Construction, or Associated Activities; Criteria C. of the Basin Plan (page 4-30.00) states:

“The Regional Water Board acknowledges that it does not have jurisdiction for direct enforcement of the rules and regulations of other local, state, or federal agencies. However, the Regional Water Board directs the Executive Officer to investigate the violation or threatened violation of those rules and regulations of other agencies which have been adopted to protect the quality of the waters in the Region. The violation of the following rules, regulations, or provisions may be considered a threatened violation of the waste discharge prohibitions and accordingly

the Executive Officer shall take appropriate action as directed by the Enforcement section of these guidelines.

1. A violation of current rules for forest practices relating to erosion control or water quality protection in any logging or related activity being conducted pursuant to regulations administered by the California Department of Forestry and Fire Protection.”

As detailed in Item 9(d) of this Order and in the February 29, 2000, Staff Report to the Regional Water Board, Mr. Hauser violated the Forest Practice Rules (FPRs) by not adequately installing erosion control measures. The FPRs are administered by CDF. Therefore, the FPRs violations are considered additional evidence of threatened violations of the Discharge Prohibitions detailed in Item 6 above.

8. The Basin Plan also contains water quality objectives (page3-2.00-3.00) including:

”Section 3. WATER QUALITY OBJECTIVES

OBJECTIVES FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES:

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Turbidity

Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Settleable Material

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”

9. The following facts are the basis for the alleged violations in this matter:
- a. THP number 1-97-187 MEN received approval from CDF for a 91-acre shelterwood and seed tree removal, commercial thinning, and rehabilitation harvest on July 30, 1997. The properties are located in portions of SE ¼, Section 22 of Township 19 North, Range 13 West, Mount Diablo Base Meridian in Mendocino County. Jessie Wine, Leif and Kristi Yde, and Axel Yde are listed as the timberland owners on THP 1-97-187 MEN and own separate properties that together make up the THP area. Axel Yde and Jessie Wine have since passed away. Floyd Wine is the Trustee for the Wine estate while Leif Yde is the contact person for the Axel Yde property.
 - b. CDF personnel invited RWQCB staff to an active field inspection for THP 1-97-187 MEN. The inspection had been prompted by repeated FPRs violations. RWQCB personnel were present to assess alleged discharges of earthen material into watercourses resulting from these violations.
 - c. The FPRs specify the installation of erosion control measures and removal of temporary crossings to take place typically by the start of the winter period (October 15 of each year). As the LTO incorporated to THP 1-97-187 MEN by minor amendment, Mr. Hauser was responsible for overseeing the implementation of erosion control measures including the removal of temporary crossings.
 - d. CDF staff conducted two inspections during the month of October 1999. Based on site conditions witnessed during these inspections, CDF staff issued two Notice of Violations (NOV) of the FPRs. These NOVs were transmitted to Mr. Hauser and detailed the FPRs violations as well as the necessary actions to mitigate the violations. The FPRs violations include failure to install waterbreaks, utilizing a landing within the watercourse and lake protection zone (WLPZ) of String Creek, utilizing native fill for a class I watercourse crossing rather than the required clean, cobble material, and failure to install a 24-inch diameter culvert at two class III crossings. The NOVs gave the LTO until November 5, 1999, to make the necessary improvements. Mr. Hauser did not respond to the NOVs and did not make the necessary improvements.
 - e. RWQCB staff inspected the THP area, String Creek and Tartar Creek on November 17 and 23, 1999. RWQCB staff determined that earthen material was discharged from several locations within the THP area. RWQCB staff further determined that features necessary to control the discharge of waste earthen material from the THP area were not installed.
 - f. Since late October several rain events have occurred in the THP area. The rain, coupled with a lack of adequate erosion control measures, resulted in erosion and the discharge of waste earthen materials to String Creek and Tartar Creek.

- g. RWQCB staff estimates that between October 15, 1999, and November 23, 1999, at least 1450 gallons of waste earthen material were discharged to String Creek and Tartar Creek resulting from timber harvest activities associated with THP 1-97-187 MEN.
- h. Tartar Creek flows into String Creek which flows into Tomki Creek which eventually flows into the Eel River. Tartar Creek, String Creek, Tomki Creek and the Eel River support the following beneficial uses:
 - cold freshwater habitat;
 - commercial and sport fishing;
 - warm freshwater habitat;
 - migration of aquatic organisms;
 - spawning reproduction and/or early development;
 - domestic and municipal supply;
 - agricultural supply industrial supply;
 - groundwater recharge;
 - navigation;
 - water contact recreation;
 - non contact recreation;
 - aquaculture;
 - estuarine habitat; and
 - wildlife habitat.
- i. The Tomki Creek watershed is listed as impaired under Section 303(d) of the Federal Clean Water Act, due to excessive amounts of sediment.
- j. The deposition of earthen material from the THP area has caused a condition of pollution by filling pools, degrading spawning and rearing habitat for Steelhead trout, Chinook salmon, non-game fish species, and smothering benthic organisms which are part of the fish rearing food chain. The Water Quality Objectives for the North Coast Region state that waters shall not contain substances in concentrations that adversely affect beneficial uses. The discharge of earthen material into watercourses and the placement of earthen material from the THP area where it could pass into watercourses were in amounts deleterious to the beneficial uses of water.

Proposed Civil Liability

- 10. Section 13350(a)(2) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate a prohibition issued by the RWQCB. Section 13350(e)(1) provides that the RWQCB may assess civil liabilities in an amount not to exceed \$10 for each gallon of waste discharged. It is estimated that at least 7.2 cubic yards, or approximately 1450 gallons, of waste were discharged.

11. In determining the amount of civil liability, the RWQCB took into account the nature, circumstances, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require, as follows:

Nature, Circumstance, Extent, and Gravity of the Violation:

Standard mitigation measures have been developed in order to reduce the potential for earthen material discharges to watercourses. Typically, erosion prevention and sediment control measures are implemented prior to October 15 of each year. These measures include, but are not limited to, waterbreaks on roads and skid trails, removal of temporary watercourse crossings not adequate to sustain high flows, protecting disturbed areas with materials designed to absorb the impact of rainfall and diffuse storm runoff, sediment basins/traps, installation of road drainage structures, and proper installation of access roads and skid trails. Failure to implement standard erosion control measures increases the potential for discharge of waste earthen material into waters of the state.

Mr. Hauser, the responsible LTO, did not install adequate erosion control measures on the properties associated with THP 1-97-187 MEN. As a result, approximately 1,450 gallons of waste earthen material were discharged to String and Tartar Creeks following rainfall events between October 15 through November 23, 1999. Earthen materials contribute to the sedimentation of watercourses. Negative impacts to watercourses resulting from sedimentation include filling pools (usually ideal habitat for rearing young fish), degradation of spawning gravel beds due to fine sediment and smothering benthic organisms which are part of the fish rearing food chain. Therefore, the discharge of waste earthen materials created a condition of pollution or nuisance. Sedimentation may also adversely affect domestic, municipal, and agricultural water supplies as well as water contact recreation and non-contact recreation such as aesthetics.

During the inspections conducted by RWQCB staff, sediment was observed deposited on gravel beds on sections of both streams. These streams have been classified as fish bearing streams by DFG. Species documented in the streams include Chinook salmon, Steelhead trout and non-game species. The observed sediment discharges originated from properties within THP 1-97-187 MEN. It is clear that waste earthen material was discharged to String and Tartar Creeks due to the lack of implementation of appropriate erosion control measures.

Ability to Pay:

Staff has no information regarding Mr. Hauser's ability to pay. Mr. Hauser or someone representing his interests should be prepared to address his ability to pay the maximum civil liability or any lesser amount.

Whether the Discharge is Susceptible to Cleanup or Abatement:

The discharge has been abated by the implementation of a short-term erosion control plan completed by a new LTO hired by owners and representatives of the properties associated with THP 1-97-189 MEN. Completion of a long-term component of the erosion control plan will abate potential future discharges.

The Degree of Toxicity of the Discharge:

The sediment discharge adversely affects the aquatic habitat by filling pools and spawning gravels necessary for fish reproduction and survival.

Ability to Pay and Effect on Ability to Continue in Business:

Staff has no information regarding Mr. Hauser's ability to pay or the effect on his ability to continue in business. Mr. Hauser or someone representing his interests should be prepared to address his ability to pay the maximum civil liability or any lesser amount.

Voluntary Cleanup Efforts Undertaken:

Mr. Hauser did not attempt any cleanup efforts. A new LTO has completed work on a short-term component of an erosion control plan. The short-term component is aimed at reducing delivery of earthen material into either String or Tartar Creeks during the ongoing winter period. A long-term component of the erosion control plan will be completed when weather conditions allow access to heavy equipment. These activities have been solely the undertaking of the owners and representatives of the properties associated to THP 1-97-189 MEN. Mr. Hauser had no involvement in any clean up efforts.

Prior History of Violations:

No additional violations associated with Mr. Hauser exist in the RWQCB records. However, NOV's for a different THP (1-96-540 MEN) exist in CDF records. Violations of the FPRs were issued by CDF pertaining to improper installation of waterbreaks and non-removal of a watercourse crossing.

Degree of Culpability:

Mr. Hauser was incorporated into the THP as the LTO on June 22, 1998, through a minor amendment. Pursuant to the minor amendment, "The LTO will be responsible for the entire THP operation which includes, but is not limited to, road and landing reconstruction, construction and maintenance in the THP area and on the appurtenant roads." THP operations include the implementation of erosion control measures.

CDF conducted an inspection on October 8, 1999, which resulted in issuing Mr. Hauser a NOV dated October 20, 1999, for failure to install waterbreaks and utilizing a landing within the watercourse and lake protection zone (WLPZ) of String Creek. The October 20, 1999 NOV further indicated that the THP had not been winterized, the seasonal roads

and tractor roads lacked drainage facilities, and detailed additional work that was necessary. The NOV gave the LTO until November 5, 1999, to make the necessary improvements. Mr. Hauser did not respond to this NOV and did not make the necessary improvements.

CDF conducted another inspection on October 22, 1999, which resulted in a second NOV being issued to Mr. Hauser on October 25, 1999. The October 25, 1999, NOV was for failure to install waterbreaks, utilizing native fill for a class I watercourse crossing rather than the required clean, cobble material, and failure to install a 24-inch diameter culvert at two class III crossings. The NOV gave the LTO until November 3, 1999, to make the necessary improvements. Mr. Hauser did not respond to the second NOV and did not make the necessary improvements.

Mr. Hauser was given ample notice that his responsibilities, as the LTO for THP 1-97-187 MEN, to install adequate erosion control measures were not being met. Mr. Hauser did not respond to the NOVs issued by CDF and did not install adequate erosion control measures. The failure to implement appropriate erosion control measures led to the discharge of waste earthen materials to String and Tartar Creeks creating a condition of nuisance or pollution to documented fish bearing streams.

Economic Savings:

According to an invoice, submitted to the landowners by a new LTO amended into THP 1-97-187 MEN, for work done as a short-term erosion control plan, the hourly rate while operating heavy equipment is \$65.00 per hour and \$37.50 for regular labor. His total charge for implementing the short-term erosion control plan amounted to \$2,945.55. This figure is specifically related to activities which should have been done by the original LTO.

The short-term erosion control plan is a minor component of the work required for the properties associated with THP 1-97-187 HUM to be fully winterized. Additional work will be required when site conditions allow heavy equipment access to currently saturated roads and skid trails, thereby increasing the total cost significantly.

Other Matters as Justice May Require:

Staff is not aware of any other matters requiring consideration.

12. The issuance of this order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to Title 14, California Code of Regulations, sections 15308 and 15321(a)(2).
13. On April 27, 2000, the Regional Water Board held a hearing and received and considered testimony from Mr. Hauser and other interested parties.

THEREFORE, IT IS HEREBY ORDERED that Mr. Roy Hauser dba Tall Timber Forest Management pay an administrative civil liability in the amount of \$10,000. The \$10,000 administrative civil liability for Mr. Roy Hauser dba Tall Timber Forest Management is due within 30 days of adoption of this Order.

Certification

I, Lee A. Michlin, do hereby certify that the foregoing is a full, true, and correct copy of an Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, North Coast Region, on April 27, 2000.

Lee A. Michlin
Executive Officer

(talltimberACL)